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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
SECRETARY

In the Matter of

Revision of Part 22 and Part 90
of the Commission's Rules to
Facilitate Future Development
of Paging Systems

WT Docket No. 96-18

Implementation of Section 309(j)
of the Communications Act --
Competitive Bidding

PP Docket No. 93-253

**REPLY COMMENTS OF THE PAGING COALITION
ON INITIAL REGULATORY FLEXIBILITY ACT ANALYSIS**

Blooston, Mordkofsky, Jackson & Dickens, on behalf of its common carrier and exclusive private carrier paging clients listed in Attachment A hereto (hereinafter "the Paging Coalition" or "the Coalition") hereby submits their reply comments on the issue of the Commission's Initial Regulatory Flexibility Act (IRFA) analysis, based on the record in the above-captioned proceeding.

The Coalition joins other small business commentators, especially Pass Word, Inc. (PWI), Metrocall, Inc. (Metrocall), A + Network (A +) and Communications Sales and Service, Inc. (CSSI), who take exception to the Initial Regulatory Flexibility Analysis (IRFA) contained in the Commission's February 9, 1996 Notice of Proposed Rulemaking (NPRM) in the above-captioned proceeding. The Commission's IRFA analysis is woefully inadequate because it contains only unsupported conclusions and it ignores the severe impact that

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its market area licensing proposal and interim licensing procedures will have on small and medium-size businesses. Therefore, the Commission's IRFA analysis is flawed.

I. THE COMMISSION'S IRFA ANALYSIS IS INADEQUATE BECAUSE IT CONTAINS ONLY UNSUPPORTED CONCLUSIONS.

As CSSI's comments clearly demonstrate, the Commission's IRFA analysis contains only unsupported conclusions and, in fact, no analysis. Because the Commission has made no attempt to assess how its proposals are expected to impact upon small businesses and how the public interest will be served thereby, the Commission's IRFA analysis is inadequate and the proposed auction rules cannot be adopted.

A. The Commission Has Failed to Consider the Full Impact of Its MTA Auction and Overlay Licensing Proposals on Incumbent Small Business Paging Operators.

Members of the Paging Coalition agree with CSSI that the Commission has failed to consider the full impact of its MTA auction and overlay licensing proposal on incumbent small business paging operators.^{1/} Instead, the Commission simply concludes that "the competitive bidding proposals contained in the Notice, if adopted, are expected to benefit small entities," and "[t]he proposed changes to the Commission's rules also will increase the flexibility of small businesses and lessen the administrative burden on small entities."^{2/}

^{1/} Comments of CSSI at 10.

^{2/} NPRM, Appendix A, p. 2.

Moreover, the Commission has not shown: (1) how competitive bidding will benefit small entities, or how such a "small entity" is to be defined; (2) how the proposed rules will provide less of a barrier to market entry than existing rules; (3) how the proposed rules will impact upon the entry, construction and operating costs for small entities; or (4) how the proposed rules will increase the flexibility of small businesses and lessen the administrative burden on small entities.^{3/}

Since the Commission has not undertaken a reasoned analysis its proposals and the significant effects they will have upon incumbent small businesses in the paging industry, it has not made an adequate IRFA analysis and the Commission's proposed rules cannot be adopted.

II. THE COMMISSION'S PROPOSED RULES WILL DISCOURAGE PARTICIPATION BY SMALL BUSINESSES AND COMPETITION IN THE PAGING INDUSTRY.

The record shows that, regardless of the availability or amount of small business bidding credits and other incentives, the Commission's proposed MTA auctions will have the anomalous effect of discouraging participation by small businesses in the paging industry, rather than enhancing their ability to compete.^{4/}

In its March 1, 1996 Comments on the interim licensing rules, the Paging Coalition demonstrated how the Commission's competitive bidding

^{3/} See Id. at pp. 10-13.

^{4/} See Comments of Metrocall at p. 23; Comments of PWI at pp. 2-5; Comments of CSSI at pp. 10-14; March 1, 1996 Interim Comments of the Paging Coalition at pp. 5-6.

proposals were contrary to intent of Congress expressed in the Initial Regulatory Flexibility Act.^{5/} The Coalition demonstrated that: (1) small businesses make up an important element of the American economy; (2) the Regulatory Flexibility Act was intended to promote the interests of small businesses; and (3) the Commission's freeze was reducing the flexibility enjoyed by paging operators under the current rules, many of whom are small businesses, to define their own areas of operation.^{6/} The same infirmity applies to the market area licensing proposal: Small businesses will be unable to define their own areas of operation, but instead will have to successfully bid on and build out coverage to an MTA.

Moreover, since many incumbent small business paging operators will not be able to afford to bid on an entire MTA license, they will lose the ability to expand or modify their coverage (since the auction winner will be entitled to all "white space" within the MTA). This restriction will make it difficult, if not impossible, for existing licensees to complete the gradual buildout of their paging system. This is particularly harsh on small licensees, which could not afford to implement their entire system at once. Many licensees have invested substantial resources in their systems, which investment will be lost if they are unable to complete their buildout and modify their systems in response to the marketplace. Therefore, the Commission's proposed rules will increase the administrative burden on small businesses.^{7/}

^{5/} See March 1, 1996 Comments of the Paging Coalition at pp. 5-6.

^{6/} Id. at 6.

^{7/} Id.

The Paging Coalition is not alone in recognizing the adverse effects that the Commission's NPRM proposals will have on small business paging operators. CSSI observes that "[e]xisting licensees, except for the one who is the sole regional licensee on the pertinent frequency, will be unable to expand their systems,"^{8/} and PWI indicates that "if the small business people who still populate the paging industry have to compete against major carriers and speculators for capital to bid for licenses, small businesses will lose that race."^{9/} Even if small businesses somehow win the needed MTA licenses, they may be unable to meet the strict buildout requirements that are likely to be adopted.

The Coalition therefore agrees with the numerous commentators who have demonstrated that the market area licensing proposal will only harm small businesses, by destroying their ability to respond to the marketplace. Whereas the paging industry used to have very low entry barriers for small businesses, these barriers will now be significant. Moreover, small businesses already in the business will be driven out.

CONCLUSION

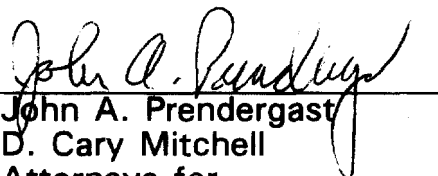
In light of the foregoing, the Paging Coalition respectfully submit that the Commission's analysis under the Initial Regulatory Flexibility Act is flawed, and cannot be used to justify the adoption of the Commission's proposed rules.

^{8/} Comments of CSSI at 13.

^{9/} Comments of PWI at pp. 4-5.

The Commission should therefore adopt licensing rules in accordance with the suggestions set forth in the Paging Coalition's initial comments.

Respectfully submitted,

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Filed: April 2, 1996

ATTACHMENT A

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Anserphone of Natchez, Inc.

CommNet Paging Inc.

Metro/Delta, Inc.

Oregon Telephone Corporation

Paging Systems Management, Inc.

Professional Answering Service, Inc.

Radio Paging Service

Radiofone, Inc.

RCC Paging, Inc.

Sema-Phoon, Inc.

Teletouch Licenses, Inc.

Ventures in Paging L.C.

Clifford D. and Barbara J. Moeller d/b/a Valley Answering Service

CERTIFICATE OF SERVICE

I, Elizabeth A. Eber, hereby certify that I am an employee of Blooston, Mordkofsky, Jackson & Dickens, and that on this 2nd day of April, 1996, I caused to be delivered by first-class U.S. mail, postage prepaid, a copy of the foregoing **Reply Comments of the Paging Coalition on Initial Regulatory Flexibility Act Analysis** to the following:

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